

ORIGINAL

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FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

MAY 18 2006

at 1 o'clock and 30 min. M  
SUE BEITIA, CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA

Plaintiff,

vs.

CARLOS ALBERTO GARCIA, (02)

Defendant.

Case No.: 05-00046-02 JMS

DEFENDANT GARCIA'S  
SENTENCING STATEMENT

Sentencing Date: July 6, 2006  
Time: 1:30 p.m.  
Judge: J. Michael Scabright

Defendant, CARLOS ALBERTO GARCIA, through his counsel of record, hereby  
files his SENTENCING STATEMENT. In support thereof, he submits the attached  
Memorandum of Points and Authorities and files and records of this case.

Dated: May 12, 2006

PETER PRIAMOS, Attorney for  
Defendant CARLOS ALBERTO  
GARCIA

DEFENDANT GARCIA'S SENTENCING STATEMENT

1 MEMORANDUM OF POINTS AND AUTHORITIES

2  
3 SUMMARY OF POSITION

4 The defendant anticipates that by the date of the sentencing hearing in this matter  
5 the defendant will have successfully completed his "debriefing" and will have earned a  
6 significant 5K1.1 reduction for cooperation. Additionally, he will be eligible for a so  
7 called 5C1.2 "safety valve" reduction of 2 levels, and a 2 point departure pursuant to  
8 U.S.S.G. section 5K2.0, "Aberrant Behavior", since this 32 year old defendant has never  
9 been convicted of a crime before and that this current behavior is clearly "aberrant". This  
10 sentencing request is based upon the fact that the United States Sentencing Guidelines are  
11 now advisory per the "Booker" decision, and that this Court is fully justified even under  
12 the Sentencing Guidelines to declare such a sentence.

13  
14 INTRODUCTION

15 In the instant case the defendant pled guilty pursuant to a Plea Agreement to one  
16 count of violating 18 U.S.C. section 841(a)(a) and 846, Conspiracy to possess with intent  
17 to distribute in excess of 500 grams of methamphetamine. The defendant entered into the  
18 Plea Agreement with the United States Attorney subject, of course, to the Court's approval.

19 The Presentence Report and the Plea Agreement make the following Sentence  
20 Computations:

21		
22	Base Level -	38
23	Specific Offense Characteristics -	0
24	Victim Related Adjustments -	0
25	Adjustment for obstruction of Justice -	0

26  
27 DEFENDANT GARCIA'S SENTENCING STATEMENT

1 Adjustment for Acceptance of Responsibility - - 3

2 Total Offense Level = 35

3  
4 The Sentencing Guideline range for a level 35, with the defendant's Criminal  
5 History level one, i.e. no prior offenses, is 168 to 210 months in custody.

6  
7 THE BOOKER DECISION

8 In United States v. Booker, 125 S. Ct. 738 (2005), the Supreme Court ruled that the  
9 United States Sentencing Guidelines were unconstitutional in violation of the Sixth  
10 Amendment to the Constitution. The Court then declared that the Guidelines were  
11 "advisory" in nature and severed the governing statute that made them mandatory,  
12 18 U.S.C. section 3553(b)(1). Thus the sentencing in this case need not be strictly  
13 controlled by the Guidelines and the 135 month sentence recommended by the  
14 Government.

15 The Court did, however, "...require...a sentencing court to consider Guideline  
16 ranges, see 18 U.S.C.A. section 3553(a)(4) (Supp. 2004), but it permits the court to tailor  
17 the sentence in light of other statutory concerns as well." (emphasis added). Thus this  
18 court is within its rights and powers to consider the lesser sentence recommended herein  
19 though the court should "consult" the Guidelines and "take them into account when  
20 sentencing". 125 S.Ct. at 767.

21  
22 DEFENDANT HAS BEEN COOPERATING WITH THE GOVERNMENT AND WILL  
23 BE ENTITLED TO A SIGNIFICANT 5K1.1 REDUCTION FOR HIS COOPERATION

24 Defendant Garcia has been cooperating with the government and a major  
25 downward departure should be made in this case because of his substantial assistance to

26  
27 DEFENDANT GARCIA'S SENTENCING STATEMENT

1 the government.

2 Section 5K1.1 reads as follows:

3  
4 Substantial Assistance to Authorities

5 Upon motion of the government stating that the defendant has  
6 provided substantial assistance in the investigation or prosecution  
7 of another person who has committed an offense, the court may  
8 depart from the guidelines.

9 (a) The appropriate reduction shall be determined by the court for  
10 reasons stated that may include, but are not limited to,  
11 consideration of the following:

12 (1) the court's evaluation of the significance and usefulness of the  
13 defendant's assistance, taking into consideration the government's  
14 evaluation of the assistance rendered;

15 (2) the truthfulness, completeness, and reliability of any  
16 information or testimony provided by the defendant;

17 (3) the nature and extent of the defendant's assistance;

18 (4) any injury suffered, or any danger or risk of injury to the  
19 defendant or his family resulting from his assistance;

20 (5) the timeliness of the defendant's assistance.

21  
22 The defendant has provided valuable and significant assistance to the government  
23 has been timely, truthful, complete and reliable. While there is no fixed "formula" in  
24 determining the amount of the downward departure for 5K1.1 cooperation, and the court is  
25 the ultimate arbiter of the amount granted, (according to the "Authors' Comments" under  
26

27 DEFENDANT GARCIA'S SENTENCING STATEMENT

1 the Sentencing Guidelines) the Court is requested to significantly reduce the Adjusted  
2 Offense Level with a major downward departure for the defendant's cooperation as the  
3 court feels is appropriate under the circumstances.

4  
5 DEFENDANT HAS MET ALL THE REQUIREMENTS NECESSARY TO ENTITLE  
6 HIM TO A 5C1.2 SAFETY VALVE TWO LEVEL DOWNWARD DEPARTURE

7  
8 The pertinent Safety valve section, 5C1.2.(5) reads as follows:

9  
10 **Section 5C1.2. Limitation on Applicability of Statutory**  
11 **Minimum Sentences in Certain Cases**

12 In the case of an offense under 21 U.S.C. Section 841..., the court  
13 shall impose a sentence in accordance with the applicable  
14 guidelines without regard to any statutory minimum sentence, if  
15 the court finds that the defendant meets the criteria in  
16 18 U.S.C. Section 3553(f)(1)-(5) set forth verbatim below:

17  
18 (5) Not later than the time of the sentencing hearing, the  
19 defendant has truthfully provided to the Government all  
20 information and evidence the defendant has concerning the  
21 offense or offenses that were part of the same course of conduct  
22 or of a common scheme or plan, but the fact that the defendant  
23 has no relevant or useful other information to provide or that the  
24 Government is already aware of the information shall not  
25 preclude a determination by the court that the defendant has

26  
27 DEFENDANT GARCIA'S SENTENCING STATEMENT

1 complied with this requirement.

2  
3 Since the defendant has "truthfully provided to the Government all information and  
4 evidence the defendant has concerning the offense or offenses that were part of the same  
5 course of conduct" and has met the other requirements of section 3553(f)(1) to (4), the  
6 defendant is entitled to the benefit of the "safety valve" and should not be sentenced to the  
7 10 year minimum sentence in connection with these charges, and he should be entitled to a  
8 2 point reduction in the Total Offense Level.

9  
10 DEFENDANT IS ENTITLED TO A 2 POINT REDUCTION BECAUSE HIS CRIME  
11 WAS AN ABERRANT BEHAVIOR

12 Under Section 5K2.0 the Guidelines allow for downward departures where the  
13 "...Commission has not been able to take into account fully [certain factors] in formulating  
14 the guidelines." One of those factors that is widely recognized is "aberrant behavior". Cf  
15 U.S. v. Thomas Everett Fairless, Jr. (1992 9<sup>th</sup> Cir.) 975 F.2d 664, 1992 U.S. App. Lexis  
16 22725.

17 The Supreme Court has set forth standards for review in these situations in Koon v.  
18 United States, 518 U.S. 81, 135 L.Ed. 2d 392 (1996), which are as follows:

19  
20 "[b]efore a departure is permitted, certain aspects of the case  
21 must be found unusual enough for it to fall outside the heartland  
22 of cases in the Guideline. To resolve this question, the district  
23 court must make a refined assessment of the many facts bearing  
24 on the outcome, informed by its vantage point and day-to-day  
25 experience in criminal sentencing."

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1  
2 In the instant case we have a defendant who is 32 years old and who has never been  
3 convicted of a crime before and has no criminal record! There was no violence involved  
4 in the crimes charged, and no indication that the defendant had been a life long criminal  
5 intent on hurting others.

6  
7 CONCLUSION

8 Defendant Garcia is not a life long, professional criminal who has spent years  
9 flouting the law. He has made a tragic mistake and should certainly pay a price for his  
10 inexcusable actions, but who should not be made to suffer an interminable amount of time  
11 in custody.

12 Quoting from Koon v. United States, supra:

13  
14 "It has been uniform and constant in the federal judicial tradition  
15 for the sentencing judge to consider every convicted person as in  
16 individual and every case as a unique study i the human failing  
17 that sometimes mitigate, sometimes magnify, the crime and the  
18 punishment to ensue. We do not understand it to have been the  
19 congressional purpose to withdraw all sentencing discretion from  
20 the United States district judge."

21  
22 Accordingly, it is respectfully requested that Defendant Garcia have his total  
23 offense level reduced in accord with the about recommendations.

24  
25 Dated: May 12, 2006

  
PETER PRIAMOS, Attorney

26  
27 DEFENDANT GARCIA'S SENTENCING STATEMENT

For Defendant CARLOS GARCIA

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DEFENDANT GARCIA'S SENTENCING STATEMENT



1 PROOF OF SERVICE BY MAIL

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES;

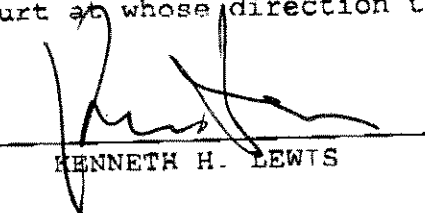
3 I am employed in the county of Los Angeles, State of  
4 California. I am over the age of 18 and not a party to the  
5 within action: my business address is 3580 Wilshire Blvd, Suite  
6 1045, Los Angeles, California 90010-2501.

7 On May 12, 2006, I served the foregoing document described  
8 as DEFENDANT GARCIA'S SENTENCING STATEMENT on all interested  
9 parties by placing copies in a pre-paid envelope addressed as  
10 follows, and placing it in the United States Mail at Los Angeles,  
11 California:

12 A.U.S.A. Beverly Wee Sameshima  
13 PJKK Federal Building, Room 6-100  
14 300 Ala Moana Blvd.  
15 Honolulu, Hawaii 96850

16 John Davis, USPO  
17 United States Probation Office  
18 300 Ala Moana Blvd., Rm C-110  
19 Honolulu, Hawaii 96850-0110  
20 Executed on May 12, 2006 at Los Angeles, California.

21 I declare under penalty of perjury that the above is true  
22 and correct. I declare that I am employed in the office of  
23 a member of the bar of this court at whose direction the  
24 service was made.

25  
26  
27  
28  
  
KENNETH H. LEWIS

DEFENDANT GARCIA'S SENTENCING STATEMENT